FILED

08 APR -3 PM 3:42

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: DEPUTY

FAXED

ORIGINAL

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* *Pro hac vice* motions to be filed

Attorneys for Defendant Linens 'N Things, Inc.

CHRISTENSEN, GLASER, FINK, JACOBS, WEIL & SHAPIRO, LLP
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NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90067
(310) 553-3000

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KRIS HENKE, Plaintiff, v. LINENS 'N THINGS, INC., an unknown business entity; and DOES 1 through 25, Inclusive Defendants.	Case No. '08 CV 0614 BEN NLS **NOTICE OF REMOVAL**

Defendant Linens 'N Things, Inc. ("Linens 'N Things" or "Defendant") files this Notice of Removal, thereby removing this case from the Superior Court of the State of California County of San Diego to the United States District Court for the Southern District and respectfully shows the Court the following:

CHRISTENSEN, GLASER, FINK, JACOBS, WEIL & SHAPIRO, LLP
10250 CONSTELLATION BOULEVARD
NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90067
(310) 553-3000

A. State Court Action

This action was originally filed by Plaintiff Kris Henke ("Henke" or "Plaintiff") on January 11, 2008 in the Superior Court of the State of California County of San Diego numbered 37-2008-00075587 on the docket of that court. Plaintiff asserted that Defendant is liable to Plaintiff for unlawful employment practices and wrongful discharge in violation of California Government Code Sections 12920 et seq. and 12940 et seq. Defendant was served on March 11, 2008. Defendant has filed its answer.

B. Diversity Jurisdiction

Both at the time of filing the Complaint and at the time of this Removal, Plaintiff was and is an individual domiciled in the County of San Diego, California (Ex. C, Plaintiff's Complaint ¶ 1). Both at the time of filing of the Complaint and at the time of this Removal, Defendant was and is a corporation existing under the laws of the state of Delaware with its principal place of business in Clifton, New Jersey. The Court should disregard the citizenship of Doe Defendants 1-25. *See Soliman v. Philip Morris Inc.*, 311 F.3d 966 (9th Cir. 2003) (noting that "[t]he citizenship of fictitious defendants is disregarded for removal purposes"). Accordingly, complete diversity exists between the parties.

With respect to potential damages, Plaintiff's Original Petition seeks general damages, special damages, punitive and exemplary damages, costs of suit, statutory penalties and remedies, and attorneys fees. (Ex. C, Plaintiff's Complaint p. 10). Pursuant to 28 U.S.C. § 1332, the district courts shall have original jurisdiction over all actions where the alleged matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between citizens of different states. 28 U.S.C. § 1332(a). Although Plaintiff does not specify the exact amount of damages, his complaint, on its face, demonstrates that the claim exceeds $ 75,000. Accordingly, Linens 'N Things may remove this action pursuant to 28 U.S.C. § 1441.

CHRISTENSEN, GLASER, FINK, JACOBS, WEIL & SHAPIRO, LLP
10250 CONSTELLATION BOULEVARD
NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90067
(310) 553-3000

Linens 'N Things has filed this Notice of Removal within thirty days after it received the Summons and Complaint, and, thus, the Notice is timely filed pursuant to 28 U.S.C. § 1446(b). Removing this case would not prejudice the parties. At this point, Linens 'N Things has answered the lawsuit, but no discovery has been conducted.

C. State Court Documents Attached

An index of all documents filed in the state court action is attached as Exhibit A. A copy of the docket sheet is attached as Exhibit B. Also attached as Exhibit C is a copy of Plaintiff's Summons and Complaint. Defendant's Answer is attached as Exhibit D. A separately signed certificate of interested persons is attached as Exhibit E.

D. Prayer

Defendant prays that the United States District Court for the Southern District of California accepts this Notice of Removal and that it assumes jurisdiction of this cause, and that it issues such further orders and processes as may be necessary to bring before it all parties necessary for the trial hereof.

DATED: April 2, 2008

Respectfully submitted,

Scott E. Gizer, State Bar No. 221962
CHRISTENSEN, GLASER, FINK, JACOBS, WEIL & SHAPIRO, LLP

Ronald M. Gaswirth, TX SBN 07752000
Carrie B. Hoffman, TX SBN 00787701
GARDERE WYNNE SEWELL LLP

Attorneys for Defendant Linens 'N Things

Exhibit A

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* *Pro hac vice* motions to be filed

Attorneys for Defendant Linens 'N Things, Inc.

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LOS ANGELES, CALIFORNIA 90067
(310) 553-3000

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KRIS HENKE,

Plaintiff,

v.

LINENS 'N THINGS, INC., an unknown business entity; DOES 1 through 25, Inclusive

Defendants.

Case No.

INDEX OF STATE COURT FILINGS

CHRISTENSEN, GLASER, FINK, JACOBS, WEIL & SHAPIRO, LLP
10250 CONSTELLATION BOULEVARD
NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90067
(310) 553-3000

INDEX

Date	Pleading
01/11/08	Complaint filed– Summons issued
01/11/08	Original Summons filed
03/11/08	Proof of Service on Linens 'N Things, Inc., filed
4/1/08	Defendant's Answer to Plaintiff's Complaint filed

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA

Name and Address of Court:
Superior Court of California, County of SAN DIEGO
330 W Broadway
San Diego, CA 92101-3827

Case Header

Case Number: 37-2008-00075587-CU-WT-CTL
Case Title: Kris Henke vs. Linens 'N Things
Filing Date: 01/11/2008
Case Status: Pending

Case Category: Civil - Unlimited
Case Type: Wrongful Termination
Location: Central

Judicial Officer:
Case Age: 81 days
Department:
Next Event Type:
Next Event Date:

Register of Actions Notice

Participant Name	Role	Attorney
Kris Henke	Plaintiff	H ANTHONY HARRIS
Linens 'N Things Inc	Defendant	SCOTT E. GIZER

Attorney Contact Information

Attorney Name	Address	Phone Number
H ANTHONY HARRIS	2214 FIFTH AVE SAN DIEGO, CA 92101	619- 232-0583
H ANTHONY HARRIS	2214 FIFTH AVE SAN DIEGO, CA 92101	619- 294-4890
H ANTHONY HARRIS	2214 FIFTH AVE SAN DIEGO, CA 92101	619- 296-9950
H ANTHONY HARRIS	2214 FIFTH AVE SAN DIEGO, CA 92101	619- 296-9991
H ANTHONY HARRIS	2214 FIFTH AVENUE SAN DIEGO, CA 92101	619- 232-0583
H ANTHONY HARRIS	2214 FIFTH AVENUE SAN DIEGO, CA 92101	619- 294-4890
H ANTHONY HARRIS	2214 FIFTH AVENUE SAN DIEGO, CA 92101	619- 296-9950
H ANTHONY HARRIS	2214 FIFTH AVENUE SAN DIEGO, CA 92101	619- 296-9991
H ANTHONY HARRIS	3200 FOURTH AVE STE 208 SAN DIEGO, CA 92103	619- 232-0583
H ANTHONY HARRIS	3200 FOURTH AVE STE 208 SAN DIEGO, CA 92103	619- 294-4890
H ANTHONY HARRIS	3200 FOURTH AVE STE 208 SAN DIEGO, CA 92103	619- 296-9950
H ANTHONY HARRIS	3200 FOURTH AVE STE 208 SAN DIEGO, CA 92103	619- 296-9991
H ANTHONY HARRIS	3200 FOURTH AVENUE, SUITE 208 SAN DIEGO, CA 92103-5716	619- 232-0583
H ANTHONY HARRIS	3200 FOURTH AVENUE, SUITE 208 SAN DIEGO, CA 92103-5716	619- 294-4890
H ANTHONY HARRIS	3200 FOURTH AVENUE, SUITE 208 SAN DIEGO, CA 92103-5716	619- 296-9950
H ANTHONY HARRIS	3200 FOURTH AVENUE, SUITE 208 SAN DIEGO, CA 92103-5716	619- 296-9991

Case Number: 37-2008-000755_ _U-WT-CTL
Case Title: Kris Henke vs. Linens 'N' Things

F_ Date: 01/11/2008
Case Status: Pending

Case Category: Civil - Unlimited
Case Type: Wrongful Termination

Location: Central

Judicial Officer:
Department:

Case Age: 81 days
Next Event Type:

Next Event Date:

Register of Actions Notice

Participant Name	Role	Attorney
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SCOTT E. GIZER	6080 CENTER DRIVE, SUITE 800 LOS ANGELES, CA 90045-1574	310- 215-7300
SCOTT E. GIZER	6080 CENTER DRIVE, SUITE 800 LOS ANGELES, CA 90045-1574	310- 553-3000
SCOTT E. GIZER	Christensen Glaser Fink Jacobs Weil & Shapiro LLP,10250 Constellation Boulevard 19th Floor Los Angeles, CA 90067	310- 215-7100
SCOTT E. GIZER	Christensen Glaser Fink Jacobs Weil & Shapiro LLP,10250 Constellation Boulevard 19th Floor Los Angeles, CA 90067	310- 215-7300
SCOTT E. GIZER	Christensen Glaser Fink Jacobs Weil & Shapiro LLP,10250 Constellation Boulevard 19th Floor Los Angeles, CA 90067	310- 553-3000

This printout does not constitute a Register of Actions

Case Number: 37-2008-00075[illegible]CU-WT-CTL Date:01/11/2008
Case Title: Kris Henke vs. Linens 'N Things Case Status: Pending

Case Category: Civil - Unlimited Location: Central
Case Type: Wrongful Termination

Judicial Officer:
Case Age: 81 days Department:
Next Event Type: Next Event Date:

Register of Actions Notice

ROA#	Entry Date	Short/Long Entry	Filed By
1	01/11/2008	Summons Issued.	
2	01/11/2008	Complaint filed by Henke, Kris. Refers to: Linens 'N Things Inc	Henke, Kris (Plaintiff)
3	01/11/2008	Original Summons filed by Henke, Kris. Refers to: Linens 'N Things Inc	Henke, Kris (Plaintiff)
4	01/11/2008	Civil Case Cover Sheet filed by Henke, Kris. Refers to: Linens 'N Things Inc	Henke, Kris (Plaintiff)
5	01/11/2008	Case assigned to Judicial Officer Quinn, Linda.	
6	01/11/2008	Summons issued.	

This printout does not constitute a Register of Actions

Case Number: 37-2008-0007[illegible] CU-WT-CTL
Case Title: Kris Henke vs. Linens 'N Things
Case Category: Civil - Unlimited
Case Type: Wrongful Termination
Case Age: 81 days
Next Event Type:

Date: 01/11/2008
Case Status: Pending
Location: Central
Judicial Officer:
Department:
Next Event Date:

Register of Actions Notice

ROA#	Entry Date	Short/Long Entry	Filed By
7	01/22/2008	Case reassigned to Hayes,Judith effective 01/19/2008	
8	03/14/2008	Certificate of Service filed by Henke, Kris. Refers to:	Henke, Kris (Plaintiff)
9	04/01/2008	Answer filed by Linens 'N Things Inc. Refers to: Henke, Kris	Linens 'N Things Inc (Defendant)

This printout does not constitute a Register of Actions

EXHIBIT C

FILED
CIVIL BUSINESS OFFICE 7

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

08 JAN 11 PM 12: 58

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
LINENS 'N THINGS, an unknown business entity;
and DOES 1-25, Inclusive.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
KRIS HENKE

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, Central Hall of Justice
330 W. Broadway
San Diego, CA 92101

CASE NUMBER: *(Número del Caso):* 37-2008-00075587-CU-WT-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Law Office of Brictson & Cohn Tel: (619) 296-9387 Fax: (619) 232-0583
2214 Fifth Avenue, San Diego, CA 92101

DATE: JAN 11 2008 *(Fecha)* Clerk, by *(Secretario)* T. Lusch, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☒ on behalf of *(specify)*: LINENS 'N THINGS, AN UNKNOWN BUSINESS ENTITY
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☒ other *(specify)*: BUSINESS ORGANIZATION, FORM UNKNOWN
4. ☐ by personal delivery on *(date)*:

FILED
CIVIL BUSINESS OFFICE 7
CENTRAL DIVISION

08 JAN 11 PM 12:58

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

Timothy L. Brictson, 174907
H Anthony Harris, 189813
LAW OFFICE OF BRICTSON AND COHN
2214 Fifth Avenue
San Diego, California 92101
Tel. (619) 296-9387
Fax. (619) 232-0583
Attorneys for Plaintiff, KRIS HENKE

SAN DIEGO SUPERIOR COURT, COUNTY OF SAN DIEGO

CENTRAL DIVISION—GENERAL CIVIL

KRIS HENKE **Plaintiffs,** **V.** **LINENS 'N THINGS, an unknown business entity; and DOES 1-25, Inclusive.** **Defendants.**	**Case No.** 37-2008-00075587-CU-WT-CTL **PLAINTIFF'S COMPLAINT FOR DAMAGES FOR: UNLAWFUL EMPLOYMENT PRACTICES PURSUANT TO CAL. GOV. CODE §12940, *ET. SEQ*; WRONGFUL DISCHARGE IN VIOLATION OF CALIFORNIA GOVERNMENT CODE SECTIONS 12920 AND 12940.** **[JURY TRIAL REQUESTED]**

COMES NOW PLAINTIFF, alleging against Defendants as follows:

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff, KRIS HENKE, (hereinafter "Plaintiff" or "HENKE") was, and at all times herein mentioned is, a resident of the County of San Diego, State of California.

2. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendant LINENS 'N THINGS (herein LnT) is qualified to do

business in the State of California and doing business in the State of California, County of San Diego.

3. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 25 and, therefore, sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities when they are ascertained.

4. Plaintiff is informed and believes, and thereon alleges that each fictitiously named Defendant is responsible in some manner for the occurrences herein alleged and Plaintiff's injuries and damages as herein alleged were directly, proximately, and/or legally caused by Defendant, and all of their acts.

5. Plaintiff is informed and believes, and thereon alleges that each aforementioned Defendant is responsible in some manner for the occurrences herein alleged and Plaintiff's injuries and damages as herein alleged were directly, proximately, and/or legally caused by Defendant, and all of their acts.

6. Plaintiff is informed and believes, and thereon alleges that the aforementioned DOES are somehow responsible for the acts alleged herein as the agents, employers, representatives, or employees of other named Defendant, and in doing the acts alleged herein, were acting within the scope of their agency, employment or representative capacity, as said named Defendant, or of each other.

7. Plaintiff is informed and believes, and thereon alleges, that each of these Defendants named herein, are the agents, employer's representatives, or employees of the other named Defendants, and in performing the acts alleged

herein, were acting within the scope of their agency, employment, and/or representative capacity, and are therefore responsible for the acts complained herein

8. Defendant had constructive knowledge of the tortuous acts and/or omissions alleged herein as a result of declining to listen to Plaintiff's repeated requests for accommodation, otherwise discouraging employee's requests for accommodation, and/or by giving employees no reasonably available means to request accommodation.

9. The tortuous acts and omissions alleged to have occurred herein were performed by management level employees of Defendant, including, but not limited to: Tracy Bookholt, Sharon Coleman, and Alex Mate.

10. Such tortuous acts were authorized or ratified by upper-level managerial employees of Defendant so as to render said corporation liable for punitive damages herein. The actions of Defendant, and each of them, against Plaintiff constitute an unlawful employment practice in violation of California Government Code § 12940, et seq., and has caused, and will continue to cause Plaintiff loss of earnings and other benefits.

11. The discriminatory actions described herein of Defendants, and each of them, against Plaintiff were done with malice and with reckless indifference to, and in disregard of Plaintiff's rights under the FEHA in that Defendant, through their agents, maliciously discriminated against Plaintiff because of Plaintiff's physical disability in violation of California Government Code § 12940.

///

12. The unlawful employment practices complained of herein, occurred in San Diego County. Plaintiff filed his charge of discrimination with the California Department of Fair Employment and Housing on January 12, 2007 and received from the DFEH his "right to sue" letter on January 18, 2007.

13. Defendant and Doe Defendants are an "employer" within the meaning of California Government Code § 12940, ET. seq.

SPECIFIC FACTUAL ALLEGATIONS

14. At all relevant times Plaintiff has had Post Laminectomy Syndrome as a result of recurring disc herniations to his lumbar spine, requiring surgeries including a fusion of the L3-4 lumbar spine, which is a qualified disability under the Fair Employment and Housing Act, as it limits a major life activity, or is regarded as limiting a major life activity.

15. In or around 1997, Plaintiff was hired by Defendant Linens 'N Things. Plaintiff was placed in a permanent position in Defendant's Encinitas store as Operations Manager.

16. At all times relevant herein, Plaintiff worked competently and loyally for Defendant and prior to the progression of his disability, he never received any complaints from Defendant regarding his performance.

17. In or around October of 2001, Plaintiff's disability to his back was worsening and thus Plaintiff sought treatment for his condition. Plaintiff kept Defendant informed of his treatment. Plaintiff's physicians informed Plaintiff that surgery could alleviate some of his pain, Plaintiff told Defendant, and was placed on Temporary Disability.

18. Plaintiff underwent lumbar fusion surgery in March, 2005, which was subsequently deemed successful, as Plaintiff was deemed to be able to return to work with a restriction of no Heavy Work on January 5, 2006.

19. Plaintiff repeatedly requested that reasonable accommodations be made regarding his physical condition.

20. At all times prior to his termination, Plaintiff performed his duties, and/or essential duties and/or could otherwise perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others with reasonable accommodation(s).

21. Plaintiff contacted Defendant and its agents to discuss his return to work. He contacted his District Manager, Sharon Coleman, who indicated she had no control over his return to work and he must contact Alex Mate, District Human Resources representative.

22. Plaintiff repeatedly made attempts to contact Alex Mate in Human Resources to discuss his return to work and any needed accommodations that might be needed for his return to work.

23. Plaintiff was called by Alex Mate on January 12, 2006 who stated that he was informed by LnT that LnT had no positions or work available for Plaintiff due to his disability. Plaintiff once again requested accommodation.

24. Alex Mate informed Plaintiff that Tracy Bookholt in Risk Management might be able to help. Plaintiff emailed and called Tracy Bookholt regarding possibility of his returning to work with LnT.

25. Plaintiff spoke with Tracy Bookholt on January 13, 2007, but she refused to discuss the possibility of Plaintiff's return to work, or otherwise engage in any discussions relating Plaintiff's return to work.

26. Plaintiff believes and contends and based thereon alleges that Defendant engaged in the following illegal activity and was otherwise fired from his job for the following illegal reasons:

a. Defendant failed to engage in timely, good faith, interactive process with Plaintiff to determine effective reasonable accommodations, in response to a request for reasonable accommodations by Plaintiff with a known serious back condition, a medical condition and/or disability qualifying Plaintiff to protection under the California Government Code;

b. Defendant failed to make reasonable accommodation for the known physical disability and/or medical condition of Plaintiff;

c. Plaintiff was terminated as a result of his disabling medical condition. Defendants' failure to act in conformity with Government Code §12940, et seq., as outlined above, is a violation of the FEHA and the public policy of non-discrimination it embodies.

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FIRST CAUSE OF ACTION

Unlawful Employment Practices in violation of California Government Code Sections 12920 and 12940 by Plaintiff against Defendant and all Doe Defendants individually and jointly

27. Plaintiff re-alleges and incorporates by reference herein all above and below paragraphs.

28. California Government Code Section 12920 prohibits the practice of discrimination because of disability and/or medical condition, subsection (j) (1) makes it unlawful for an employer, because of physical disability or medical condition, to harass an employee.

29. California Government Code Section 12940(m) makes it unlawful for an employer or other entity to fail to make reasonable accommodation for the known physical disability or medical condition of an employee.

30. California Government Code Section 12940 (n) makes it unlawful for an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee with a known physical disability or known medical condition.

31. As more fully alleged above, Defendant LnT, by and through its agents, managers, and employees, failed to make any reasonable accommodation for Plaintiff's known physical disability.

32. As more fully alleged above, Defendant failed to engage in a timely, good faith, interactive process with Plaintiff to determine effective reasonable

accommodations, in response to Plaintiff's request for reasonable accommodation as a result of his known physical disability or known medical condition.

33. As a legal (proximate) result of Defendants and each of their discriminatory acts or omissions, and in violation of FEHA California Government Code Section 12920 and 12940, Plaintiff has been harmed, in that he has suffered the loss of the wages, salary, and benefits.

34. As a further legal (proximate) result of Defendants and each of their discriminatory actions, Plaintiff has been harmed in that he has suffered the intangible loss of employment- related opportunities and experience in the position which Plaintiff would have garnered. Plaintiff has been damaged in an amount according to proof at trial.

35. As a further legal (proximate) result of Defendants, and each of their discriminatory actions, Plaintiff has been harmed, in that he has suffered humiliation and mental anguish as well as emotional and physical distress, and has been injured in both mind and body. Plaintiff has been damaged in an amount according to proof at trial.

36. Plaintiff is informed and believes he will incur further material expenses, the exact amount of which is presently unknown to Plaintiff.

SECOND CAUSE OF ACTION

Wrongful Discharge in violation of California Government Code Sections 12920 et seq. and 12940 et seq. against all Defendants

37. Plaintiff re-alleges and incorporates by reference herein all above paragraphs as well as each and every allegation plead subsequently herein.

38. California Government Code Section 12940 makes in unlawful for an employer, because physical disability or medical condition, to discharge an employee from employment.

39. Defendant caused Plaintiff to be terminated on the basis of Plaintiff's physical disability and / or medical condition as specified and defined by California Government Code Section 12926.1.

40. In doing the acts so described, Defendant violated the FEHA, California Government Code Section 12920 and 12940.

41. As a legal (proximate) result of Defendants and each of their discriminatory actions, and in violation of FEHA California Government Code Section 12920 and 12940, Plaintiff has been harmed in that he has suffered the loss of the wages, salary, benefits

42. As a further legal (proximate) result of Defendants and each of their discriminatory actions, Plaintiff has been harmed in that he has suffered the intangible loss of employment- related opportunities and experience in the position which Plaintiff would have garnered. Plaintiff has been damaged in an amount according to proof at trial.

43. As a further legal result of Defendant's, and each of their discriminatory actions or omissions, Plaintiff has been harmed in that he has suffered humiliation and mental anguish as well as emotional and physical distress, and has been injured in both his mind and in body. Plaintiff has been damaged in an amount according to proof at trial.

44. Plaintiff is informed and believes he will incur further material expenses, the exact amount of which is presently unknown to Plaintiff.

WHEREFORE Plaintiff prays for the following relief:

1. For special damages in an amount to be proved at trial;
2. For general damages in an amount to be proven at trial;
3. For punitive and exemplary damages;
4. For cost of suit herein incurred;
5. For all applicable statutory penalties and remedies;
6. For attorney fees;
7. For such other and further relief as the court may deem just and proper.

Law Offices of Brictson & Cohn

Dated: January 10, 2008 BY: ______________________

H Anthony Harris
Attorney for Plaintiff
KRIS HENKE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS: 330 West Broadway
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Central
TELEPHONE NUMBER: (619) 685-6149

PLAINTIFF(S) / PETITIONER(S): Kris Henke

DEFENDANT(S) / RESPONDENT(S): Linens 'N Things

HENKE VS. LINENS 'N THINGS

NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2008-00075587-CU-WT-CTL

Judge: Linda B. Quinn Department: C-74

COMPLAINT/PETITION FILED: 01/11/2008

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2008-00075587-CU-WT-CTL CASE TITLE: Henke vs. Linens 'N Things

NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial

ADR OPTIONS

1) CIVIL MEDIATION PROGRAM: The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participant in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non- binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

Assignment to Mediation, Cost and Timelines: Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: $150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

2) JUDICIAL ARBITRATION: Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

Assignment to Arbitration, Cost and Timelines: Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under $50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

3) SETTLEMENT CONFERENCES: The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

4) OTHER VOLUNTARY ADR: Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

ADDITIONAL ADR INFORMATION: For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	FOR COURT USE ONLY
STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	
PLAINTIFF(S): Kris Henke	
DEFENDANT(S): Linens 'N Things	
SHORT TITLE: HENKE VS. LINENS 'N THINGS	
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)	CASE NUMBER: 37-2008-00075587-CU-WT-CTL

Judge: Linda B. Quinn Department: C-74

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- ☐ Court-Referred Mediation Program
- ☐ Private Neutral Evaluation
- ☐ Private Mini-Trial
- ☐ Private Summary Jury Trial
- ☐ Private Settlement Conference with Private Neutral
- ☐ Other (specify): ______
- ☐ Court-Ordered Nonbinding Arbitration
- ☐ Court-Ordered Binding Arbitration (Stipulated)
- ☐ Private Reference to General Referee
- ☐ Private Reference to Judge
- ☐ Private Binding Arbitration

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) ______

Alternate: (mediation & arbitration only) ______

Date: ______ Date: ______

______ Name of Plaintiff ______ Name of Defendant

______ Signature ______ Signature

______ Name of Plaintiff's Attorney ______ Name of Defendant's Attorney

______ Signature ______ Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 01/11/2008 ______ JUDGE OF THE SUPERIOR COURT

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Law Office of Bricton & Cohn
H Anthony Harris, SBN 189813
2214 Fifth Avenue
San Diego, CA 92101
TELEPHONE NO.: 619-296-9387 FAX NO.: 619-232-0583
ATTORNEY FOR (Name): KRIS HENKE

FOR COURT USE ONLY

FILED
CIVIL BUSINESS OFFICE 7
CENTRAL DIVISION
08 JAN 11 PM 12:58
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: 330 W. Broadway
MAILING ADDRESS: PO BOX 122724
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Central Hall of Justice

CASE NAME:
KRIS HENKE v. LINEN 'N THINGS

CIVIL CASE COVER SHEET

[✔] Unlimited (Amount demanded exceeds $25,000)
[ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation
[ ] Counter [ ] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
37-2008-00075587-CU-WT-CTL
JUDGE:
DEPT:

Items 1–5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort
[ ] Auto (22)
[ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
[ ] Asbestos (04)
[ ] Product liability (24)
[ ] Medical malpractice (45)
[ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
[ ] Business tort/unfair business practice (07)
[ ] Civil rights (08)
[ ] Defamation (13)
[ ] Fraud (16)
[ ] Intellectual property (19)
[ ] Professional negligence (25)
[ ] Other non-PI/PD/WD tort (35)

Employment
[✔] Wrongful termination (36)
[ ] Other employment (15)

Contract
[ ] Breach of contract/warranty (06)
[ ] Collections (09)
[ ] Insurance coverage (18)
[ ] Other contract (37)

Real Property
[ ] Eminent domain/Inverse condemnation (14)
[ ] Wrongful eviction (33)
[ ] Other real property (26)

Unlawful Detainer
[ ] Commercial (31)
[ ] Residential (32)
[ ] Drugs (38)

Judicial Review
[ ] Asset forfeiture (05)
[ ] Petition re: arbitration award (11)
[ ] Writ of mandate (02)
[ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
[ ] Antitrust/Trade regulation (03)
[ ] Construction defect (10)
[ ] Mass tort (40)
[ ] Securities litigation (28)
[ ] Environmental/Toxic tort (30)
[ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
[ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
[ ] RICO (27)
[ ] Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
[ ] Partnership and corporate governance (21)
[ ] Other petition *(not specified above)* (43)

2. This case [ ] is [✔] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [ ] Large number of separately represented parties
   b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [ ] Substantial amount of documentary evidence
   d. [ ] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Type of remedies sought *(check all that apply)*:
   a. [✔] monetary b. [ ] nonmonetary; declaratory or injunctive relief c. [✔] punitive
4. Number of causes of action *(specify)*: 2
5. This case [ ] is [✔] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: 1/11/08
H Anthony Harris
(TYPE OR PRINT NAME)

[signature]
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

LMS Packing Slip

Package ID: 935573

Tracking Number:	944763197080
Package Recipient:	Ronald Gaswirth
Recepient Company:	Gardere Wynne Sewell LLP
Recepient Address:	3000 Thanksgiving Tower 1601 Elm Street Dallas TX 75201 USA
Phone Number:	2149994601

Package Contents:

Transmittal Number	Case Number	Title of Action
5651277	37-2008-00075587-CU-WT-CTL	Kris Henke vs. Linens 'N Things

CORPORATION SERVICE COMPANY®

AP1 / ALL
Transmittal Number: 5651277
Date Processed: 03/11/2008

Notice of Service of Process

Primary Contact: Ronald M. Gaswirth
Gardere Wynne Sewell LLP
3000 Thanksgiving Tower
1601 Elm Street
Dallas, TX 75201

Copy of transmittal only provided to: Liz Hamm

Entity:	Linens 'N Things, Inc. Entity ID Number 1704112
Entity Served:	Linens 'N Things
Title of Action:	Kris Henke vs. Linens 'N Things
Document(s) Type:	Summons/Complaint
Nature of Action:	Wrongful Termination
Court:	San Diego Superior Court, California
Case Number:	37-2008-00075587-CU-WT-CTL
Jurisdiction Served:	California
Date Served on CSC:	03/11/2008
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Plaintiff's Attorney:	H. Anthony Harris 619-296-9387

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

CSC is SAS70 Type II certified for its Litigation Management System.

2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

EXHIBIT D

Scott E. Gizer, State Bar No. 221962
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WEIL & SHAPIRO, LLP
10250 Constellation Boulevard, 19th Floor
Los Angeles, California 90067
Telephone: (310) 553-3000
Facsimile: (310) 556-2920

Ronald M. Gaswirth*, TX State Bar No. 07752000
Carrie B. Hoffman*, TX State Bar No. 00787701
GARDERE WYNNE SEWELL LLP
1601 Elm Street, Suite 3000
Dallas, TX 75201-4761
Telephone: (214) 999-4601
Facsimile: (214) 999 - 3601

* *Pro hac vice* motions to be filed

Attorneys for Defendant Linens 'N Things, Inc.

FILED
CIVIL BUSINESS OFFICE 5
2008 APR -1 P 1:36
CLERK SUPERIOR COURT
SAN DIEGO COUNTY, CA

COPY

LAW OFFICES
CHRISTENSEN, GLASER, FINK, JACOBS, WEIL & SHAPIRO, LLP
10250 CONSTELLATION BOULEVARD
NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90067
(310) 553-3000

SAN DIEGO SUPERIOR COURT, COUNTY OF SAN DIEGO

CENTRAL DIVISION—GENERAL CIVIL

KRIS HENKE, an individual, Plaintiff, v. LINENS 'N THINGS, INC., an unknown business entity; and DOES 1 through 25, Inclusive Defendants.	Case No. 37-2008-00075587-CU-WT-CTL **DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES**

Defendant Linens 'N Things, Inc. (the "Defendant") answers the Complaint (the "Complaint") of Kris Henke (the "Plaintiff"), as follows:

GENERAL DENIAL

Pursuant to California Code of Civil Procedure Section 431.30 *et seq.*, Defendant denies generally and specifically each and every allegation contained in the unverified Complaint and each and every purported cause of action set forth therein, and further generally and specifically

ORIGINAL

Scott E. Gizer, State Bar No. 221962
CHRISTENSEN, GLASER, FINK, JACOBS,
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10250 Constellation Boulevard, 19th Floor
Los Angeles, California 90067
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Ronald M. Gaswirth*, TX State Bar No. 07752000
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Telephone: (214) 999-4601
Facsimile: (214) 999 - 3601

* *Pro hac vice* motions to be filed

Attorneys for Defendant Linens 'N Things, Inc.

LAW OFFICES
CHRISTENSEN, GLASER, FINK, JACOBS, WEIL & SHAPIRO, LLP
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NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90067
(310) 553-3000

SAN DIEGO SUPERIOR COURT, COUNTY OF SAN DIEGO

CENTRAL DIVISION—GENERAL CIVIL

KRIS HENKE, an individual, Plaintiff, v. LINENS 'N THINGS, INC., an unknown business entity; and DOES 1 through 25, Inclusive Defendants.	Case No. 37-2008-00075587-CU-WT-CTL **DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES**

Defendant Linens 'N Things, Inc. (the "Defendant") answers the Complaint (the "Complaint") of Kris Henke (the "Plaintiff"), as follows:

GENERAL DENIAL

Pursuant to California Code of Civil Procedure Section 431.30 *et seq*., Defendant denies generally and specifically each and every allegation contained in the unverified Complaint and each and every purported cause of action set forth therein, and further generally and specifically denies that Plaintiff has sustained any damage or injury or is entitled to any relief or recovery whatsoever.

AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses to the Complaint, the Defendant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

1. For a separate and distinct defense, Defendant affirmatively alleges the Complaint and each cause of action therein fail to state facts sufficient to constitute a cause of action upon which any relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(No Damages)

2. For a separate and distinct defense, Defendant affirmatively alleges the Complaint and each cause of action therein are barred in whole or in part because Plaintiff has suffered no damages.

THIRD AFFIRMATIVE DEFENSE

(Good Faith and *Bona Fide* Exercise of Legal Rights)

3. For a separate and distinct defense, Defendant affirmatively alleges that their actions were committed in good faith and were a *bona fide* exercise of their legal rights.

FOURTH AFFIRMATIVE DEFENSE

(Actions Based on Nondiscriminatory Business Reasons)

4. For a separate and distinct defense, Defendant affirmatively alleges that all employment actions taken with respect to Plaintiff are based on legitimate, nondiscriminatory business reasons.

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///

///

///

LAW OFFICES
CHRISTENSEN, GLASER, FINK, JACOBS, WEIL & SHAPIRO, LLP
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LOS ANGELES, CALIFORNIA 90067
(310) 553-3000

FIFTH AFFIRMATIVE DEFENSE

(Not a Qualified Individual with a Disability or Medical Condition)

5. For a separate and distinct defense, Defendant affirmatively alleges that Plaintiff is not, and has not been at the relevant times, a qualified individual with a disability or medical condition within the meaning of the California Fair Employment and Housing Act.

SIXTH AFFIRMATIVE DEFENSE

(Unable to Perform Essential Job Functions)

6. For a separate and distinct defense, Defendant affirmatively alleges that Plaintiff's claims fail because Plaintiff was unable to perform the essential functions of his job, with or without reasonable accommodation.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

7. For a separate and distinct defense, Defendant affirmatively alleges that Plaintiff has failed to mitigate his damages, if any.

EIGHTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

8. For a separate and distinct defense, Defendant affirmatively alleges that Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

NINTH AFFIRMATIVE DEFENSE

(Plaintiff Contributed to Damages)

9. For a separate and distinct defense, Defendant affirmatively alleges that Plaintiff's actions contributed in whole or in part to his alleged damages.

TENTH AFFIRMATIVE DEFENSE

(Damages are Too Speculative)

10. For a separate and distinct defense, Defendant affirmatively alleges that Plaintiff's alleged damages are too speculative to be permitted.

LAW OFFICES
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10250 CONSTELLATION BOULEVARD
NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90067
(310) 553-3000

ELEVENTH AFFIRMATIVE DEFENSE

(Damages Barred to Extent they Deny Due Process)

11. For a separate and distinct defense, Defendant affirmatively alleges that Plaintiff's claims for punitive damages are barred to the extent that the imposition of punitive damages would constitute a denial of due process under the United States Constitution and the California Constitution.

TWELFTH AFFIRMATIVE DEFENSE

(No Indifference and Intentional Discrimination)

12. For a separate and distinct defense, Defendant affirmatively alleges that they cannot be liable for punitive damages because they have not engaged in any discriminatory practices with malice or with reckless indifference and have not engaged in unlawful intentional discrimination.

THIRTEENTH AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses)

13. For a separate and distinct defense, Defendant affirmatively alleges the Complaint and each cause of action therein are stated in conclusory terms, and therefore the Defendant cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly, the Defendant reserves the right to add additional affirmative defenses, if and to the extent such affirmative defenses are applicable to this action.

WHEREFORE, the Defendant prays for judgment as follows:

1. That Plaintiff take nothing by way of his Complaint and that the Complaint may be dismissed with prejudice;

2. That Defendant be awarded their costs of suit; and

3. This Court award such other and further relief as it may deem just and proper.

DATED: April 1, 2008

Scott E. Gizer
CHRISTENSEN, GLASER, FINK, JACOBS, WEIL & SHAPIRO, LLP

Ronald M. Gaswirth, TX State Bar No. 07752000
Carrie B. Hoffman, TX State Bar No. 00787701
GARDERE WYNNE SEWELL LLP

By:____________________________
Attorneys for Defendant Linens 'N Things, Inc.

LAW OFFICES
CHRISTENSEN, GLASER, FINK, JACOBS, WEIL & SHAPIRO, LLP
10250 CONSTELLATION BOULEVARD
NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90067
(310) 553-3000

LAW OFFICES
CHRISTENSEN, GLASER, FINK, JACOBS, WEIL & SHAPIRO, LLP
10250 CONSTELLATION BOULEVARD
NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90067
(310) 553-3000

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 10250 Constellation Boulevard, Nineteenth Floor, Los Angeles, California 90067.

On April 1, 2008 at the direction of a member of the Bar of this Court, I served the within:

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES

on the interested parties to this action by delivering a copy thereof in a sealed envelope addressed to each of said interested parties at the following address(es):

H Anthony Harris
Law Offices of Brictson & Cohn
2214 Fifth Avenue
San Diego, CA 92101

☒ (BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☐ (BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

☐ (BY FACSIMILE) I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed on April 1, 2008, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

[signature]
ADELE JOHNSON DAVIS

CHRISTENSEN, GLASER, FINK, JACOBS, WEIL & SHAPIRO, LLP
10250 CONSTELLATION BOULEVARD
NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90067
(310) 553-3000

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 10250 Constellation Boulevard, Nineteenth Floor, Los Angeles, California 90067.

On April 2, 2008 at the direction of a member of the Bar of this Court, I served the within:

NOTICE OF REMOVAL

on the interested parties to this action by delivering a copy thereof in a sealed envelope addressed to each of said interested parties at the following address(es):

H Anthony Harris
Law Offices of Brictson & Cohn
2214 Fifth Avenue
San Diego, CA 92101

[X] (BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

[ ] (BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

[ ] (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

[ ] (BY FACSIMILE) I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed this on April 2, 2008, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

ADELE JOHNSON-DAVIS

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

ORIGINAL

FAXED

08 APR -3 PM 3:42
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

'08 CV 0614 BEN NLS

I. (a) PLAINTIFFS
Kris Henke

DEFENDANTS
Linens 'N Things

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Passaic
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Law Offices of Brictson & Cohn
2214 Fifth Avenue
San Diego, CA 92101
(619) 296-9387

ATTORNEYS (IF KNOWN)
Christensen, Glaser, Fink, Jacobs, Weil, & Shapiro, LLP
10250 Constellation Boulevard, 19th Fl
Los Angeles, California 90067
(310) 553-3000

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- [ ] 1 U.S. Government Plaintiff
- [ ] 3 Federal Question (U.S. Government Not a Party)
- [ ] 2 U.S. Government Defendant
- [x] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(For Diversity Cases Only)

	PT	DEF		PT	DEF
Citizen of This State	[x] 1	[ ] 1	Incorporated or Principal Place of Business in This State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[ ] 2	Incorporated and Principal Place of Business in Another State	[ ] 5	[x] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)
28 U.S.C. Section 1332

V. NATURE OF SUIT *(PLACE AN "X" IN ONE BOX ONLY)*

CONTRACT
- [ ] 110 Insurance
- [ ] 120 Marine
- [ ] 130 Miller Act
- [ ] 140 Negotiable Instrument
- [ ] 150 Recovery of Overpayment & Enforcement of Judgment
- [ ] 151 Medicare Act
- [ ] 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- [ ] 153 Recovery of Overpayment of Veteran's Benefits
- [ ] 160 Stockholders' Suits
- [ ] 190 Other Contract
- [ ] 195 Contract Product Liability

REAL PROPERTY
- [ ] 210 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 290 All Other Real Property

TORTS

PERSONAL INJURY
- [ ] 310 Airplane
- [ ] 315 Airplane Product Liability
- [ ] 320 Assault, Libel & Slander
- [ ] 330 Federal Employers' Liability
- [ ] 340 Marine
- [ ] 345 Marine Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Product Liability
- [ ] 360 Other Personal Injury

PERSONAL INJURY
- [ ] 362 Personal Injury - Medical Malpractice
- [ ] 365 Personal Injury - Product Liability
- [ ] 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [ ] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

CIVIL RIGHTS
- [ ] 441 Voting
- [x] 442 Employment
- [ ] 443 Housing/ Accommodations
- [ ] 444 Welfare
- [ ] 440 Other Civil Rights

PRISONER PETITIONS
- [ ] 510 Motion to Vacate Sentence

HABEAS CORPUS:
- [ ] 530 General
- [ ] 535 Death Penalty
- [ ] 540 Mandamus & Other
- [ ] 550 Civil Rights
- [ ] 555 Prison Conditions

FORFEITURE/PENALTY
- [ ] 610 Agriculture
- [ ] 620 Other Food & Drug
- [ ] 625 Drug Related Seizure of Property 21 USC 881
- [ ] 630 Liquor Laws
- [ ] 640 R.R. & Truck
- [ ] 650 Airline Regs.
- [ ] 660 Occupational Safety/Health
- [ ] 690 Other

LABOR
- [ ] 710 Fair Labor Standards Act
- [ ] 720 Labor/Mgmt. Relations
- [ ] 730 Labor/Mgmt. Reporting & Disclosure Act
- [ ] 740 Railway Labor Act
- [ ] 790 Other Labor Litigation
- [ ] 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- [ ] 422 Appeal 28 USC 158
- [ ] 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- [ ] 820 Copyrights
- [ ] 830 Patent
- [ ] 840 Trademark

SOCIAL SECURITY
- [ ] 861 HIA (13958)
- [ ] 862 Black Lung (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID Title XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 Taxes (U.S. Plaintiff or Defendant)
- [ ] 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- [ ] 400 State Reappointment
- [ ] 410 Antitrust
- [ ] 430 Banks and Banking
- [ ] 450 Commerce/ICC Rates/etc.
- [ ] 460 Deportation
- [ ] 470 Racketeer Influenced and Corrupt Organizations
- [ ] 810 Selective Service
- [ ] 850 Securities/Commodities/ Exchange
- [ ] 875 Customer Challenge 12 USC 3410
- [ ] 891 Agricultural Acts
- [ ] 892 Economic Stabilization Act
- [ ] 893 Environmental Matters
- [ ] 894 Energy Allocation Act
- [ ] 895 Freedom of Information Act
- [ ] 900 Appeal of Fee Determination Under Equal Access to Justice
- [ ] 950 Constitutionality of State Statutes
- [x] 890 Other Statutory Actions

VI. ORIGIN *(PLACE AN "X" IN ONE BOX ONLY)*

- [ ] 1 Original Proceeding
- [x] 2 Removal from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from another district (specify)
- [ ] 6 Multidistrict Litigation
- [ ] 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: [ ] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $**
CHECK YES only if demanded in complaint:
JURY DEMAND: [x] YES [ ] NO

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE ______ Docket Number ______

DATE April 3, 2008 SIGNATURE OF ATTORNEY OF RECORD Scott E. Gizer

::ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

#149391 4/3/08
fm $350.

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

(rev. 07/89)

::ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

149391 - SR

April 03, 2008
15:40:23

Civ Fil Non-Pris
USAO #.: 08CV0614
Judge..: ROGER T BENITEZ
Amount.: $350.00 CK
Check#.: BC#67858

Total-> $350.00

FROM: HENKE V. LINENS N THINGS
CIVIL FILING